injury through action on a third person. A further possible line of distinction is between the cases where the injury to the plaintiff is intentional, and where it is only negligent. Broadly speaking, this is apparently the line which limits liability under the present state of the law. To allow recovery for an injury intentionally caused, but not for the same injury negligently caused, is not unheard of in our law.[17] An example is the refusal of some courts to allow recovery for injury caused by mental shock negligently inflicted by the defendant.[18] Here again there is no logical basis for the distinction, but the courts are influenced by the policy against multiplicity of litigation and the practical difficulties of procedure. But this produces the unfortunate result of allowing undoubted injuries to go without redress.[19]

It would seem to be a far better rule to allow recovery for all unjustified injuries caused by influencing the action of a third party, whether intentional or only the natural and probable result of an intentional or negligent act. The fact that occasional cases do allow recovery for such indirect injury to property indicates that here as in other parts of the law the modern tendency is towards a broadening of tort liability.[20] The suggested rule does not in any way increase the duty imposed on a person in respect to his actions. Every person now must act with reasonable prudence, and no increase in the degree of prudence required, nor in the kind of action in which one must exercise prudence is involved. It only imposes liability for an additional kind of injury, which is not new but which is recognized as actionable by the law in other circumstances. This does not seem to be too great a liability to impose upon the defendant, and it is certainly more just that he should be compelled to pay for the reasonably foreseeable injury which he has caused, than that the injured party should bear the loss.

RECENT CASES

ANIMALS — DAMAGE TO PERSONS BY ANIMALS — INJURY TO YOUNG CHILD IN CONSEQUENCE OF NEGLIGENCE OF CUSTODIAN. — The plaintiff, a child three years old, negligently attended by her grandfather, put her arm through the bars of a cage at the defendant's zoölogical garden, and was bitten by a "wild ass of Asia" confined therein. There was no proof that the defendant was negligent or that it had knowledge of the vicious propensity of the animal.

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[17] For instance, the action of deceit, although there is no liability for negligent language.

[18] Recovery is allowed where the shock is intentional. Wilkinson *v.* Downton, [1897] 2 Q. B. 57. But it is not allowed everywhere where the act is negligent and there is no physical impact. Spade *v.* Lynn & Boston R. Co., 168 Mass. 285, 47 N. E. 88.

[19] This will be true in all cases where the act of the third party is lawful, or where, being under no duty to act, he refrains from acting.

[20] An instance of this is the right of privacy. Pavesich *v.* New England Life Ins. Co., 122 Ga. 190, 50 S. E. 68. Also the suggested liability for negligent language, which has been adopted in New Hampshire. See an article by Professor Jeremiah Smith in 14 HARV. L. REV. 184; Cunningham *v.* Pease House Furnishing Co., 74 N. H. 435, 69 Atl. 120.

Held, that the plaintiff cannot recover. *Jones* v. *Zoölogical Society of Philadelphia*, 71 Leg. Intell. 757 (Com. Pleas, Phila. Co., Pa.).

The court apparently considered the wild Asiatic ass not inherently dangerous. It would probably be held otherwise in most jurisdictions, for the animal closely resembles the zebra, which is treated as dangerous. *Marlor* v. *Ball*, 16 T. L. R. 239. See 2 NEW INTERNAT. ENCYC. 111. *Scienter* or negligence would then be unnecessary. Some of the authorities suggest, however, that in any case the defendant's only duty is to keep the animal "secure." See *Marlor* v. *Ball*, *supra*, 240. But the generally accepted view is that the owner is bound at peril to keep it from doing injury. See *Vredenburg* v. *Behan*, 33 La. Ann. 627; SALMOND, TORTS, 3 ed., § 126. This agrees with the common expressions that the "gist of the action" or the "negligence" consists in keeping the animal with notice, actual or presumed, of his vice. See *Lynch* v. *McNally*, 73 N. Y. 347; *Marble* v. *Ross*, 124 Mass. 44; *Smith* v. *Pelah*, 2 Str. 1264; *Hammond* v. *Melton*, 42 Ill. App. 186. It is further illustrated by the rule that a good declaration need allege only keeping, vice, injury, and, in a proper case, *scienter*. *May* v. *Burdett*, 9 Q. B. 101; *Brooks* v. *Taylor*, 65 Mich. 208, 31 N. W. 837. And the fact that recovery has been had repeatedly where the animal was chained or caged seems conclusive against the contention that the defendant in the principal case had performed its full duty. *Besozzi* v. *Harris*, 1 F. & F. 92; *Laverone* v. *Mangianti*, 41 Cal. 138; *Wyatt* v. *Rosherville Gardens Co.*, 2 T. L. R. 282; *Sarch* v. *Blackburn*, 4 C. & P. 297. Very often, in such cases, the plaintiff will lose because of his own fault in causing the injury. *Marlor* v. *Ball*, *supra*. But the plaintiff here was too young to be responsible for bringing the injury on herself. *Meibus* v. *Dodge*, 38 Wis. 300; *Plumley* v. *Birge*, 124 Mass. 57; *Linck* v. *Scheffel*, 32 Ill. App. 17. And the negligence of the grandfather should not prevent recovery by the child even on the theory of imputed negligence, unless the grandfather may be said to be the agent of the parent, the real beneficiary. See 23 HARV. L. REV. 299.

BANKRUPTCY — FRAUDULENT CONVEYANCES — INSURANCE ON PROPERTY FRAUDULENTLY CONVEYED. — The bankrupt conveyed property without consideration to the defendant, for the purpose of defrauding creditors. The defendant effected insurance on the property, and on the destruction of the property after bankruptcy proceedings had begun, collected the proceeds, which the trustee now claims. *Held*, that the trustee cannot recover. *Trenholm* v. *Klinker*, 66 So. 738 (Miss.).

Insurance is not a substitute for the property insured, but the product of a contract of indemnity. Accordingly when property fraudulently conveyed is destroyed, the insurance cannot be recovered by the trustee in bankruptcy as an altered form of the property. *Bernheim* v. *Beers*, 56 Miss. 149. So if the grantee effects the insurance, the trustee is powerless. If, however, the bankrupt has paid the premiums, the insurance may be a fraudulent conveyance in itself, and the proceeds will then be recoverable by the trustee. *Lerow* v. *Wilmarth*, 9 Allen (Mass.) 382. See 26 HARV. L. REV. 362. In the principal case there is a hint of a secret trust for the grantor. In such a case, if the grantee insured for his undisclosed *cestui*, or if he purported to, and the *cestui* ratified, the *cestui*, or his trustee in bankruptcy, should of course be able to recover on principles of agency. *Lerow* v. *Wilmarth*, *supra*.

BANKRUPTCY — FRAUDULENT CONVEYANCES — VOLUNTARY SETTLEMENTS UNDER ENGLISH BANKRUPTCY STATUTE. — A bankrupt, within two years of bankruptcy, purchased a clock, and caused it to be affixed to a hotel of which his nephew was about to become lessee. In consideration of this being considered part of the freehold, the landlord agreed to reduce the agreed yearly rental for the nephew. *Held*, that the trustee cannot recover from the nephew. *In re Branson*, [1914] 3 K. B. 1086 (C. A.).